Camp earning $120 a month. He was awarded $38,000.

As has been said again and again, the assessment of damages in cases of personal injury is one of the most difficult things for either a judge in the first instance or a Court of Appeal. When a man has lost his arm there is no sum in the world that can in the true sense compensate for it. Yet compensation in the form of money is the only way in which he can be granted redress for the injury he has suffered. It is neither possible nor desirable for damages for the loss of an arm to be standardised or rigidly classified, as no two cases are ever alike. But in order to maintain some semblance of uniformity, the amounts awarded in past cases, which bear reasonable comparison with the case under review, should serve as a useful guide. The general principle is that an appellate court can only interfere with an assessment if it is considered so inordinately low or inordinately high as to make the court exclaim, "Good gracious, is that the sum which has been awarded — that sum must be altered", or if it is so much out of line with the discernible trend or pattern of awards in reasonably comparable cases that it must be regarded as a wholly erroneous estimate.

Of all the cases that I have considered above, the one case which bears the most reasonable comparison with the present case is the case of *Pahang Lin Siong Motor Co., Ltd. & Anor*,[1] both from the point of view of the ages and the earning capacities of the plaintiffs in the two cases. In applying the principles which I have stated above to the award in the present case, I cannot help thinking that it is inordinately high or manifestly excessive. Allowing for the extent to which money values have depreciated since the *Pahang Lin Siong* case[1] was decided, I would consider a sum of $27,500 as a suitable award in the present case. I would therefore allow this appeal with costs and substitute that sum in place of the amount awarded by the trial judge.

Ong C.J.: I agree with the judgment just delivered by Gill F.J. and would add only a few words. This court normally does not interfere with an assessment of damages even where the award seemed much too high, so long as there has not been any error of principle discerned in the judgment or the sum manifestly excessive. In course of time, however, a generous award left undisturbed becomes treated as a norm and progressively the amount rises in subsequent cases. The erosion process has to be arrested from time to time and this case in my opinion is one where we must step in to do so.

Ong Hock Sim J.: I have had the advantage of reading the judgment of Gill F.J. and also the judgment of Ong C.J. with which I am fully in agreement.

I need hardly say that it is desirable that the Federal Court should enunciate certain principles upon which the difficult problem of assessing damages in cases of personal injury can be resolved so that undue disparity in the amount of damages awarded in almost identical cases can be avoided.

Appeal allowed.

Solicitors: *Skrine & Co.; Murphy & Dunbar.*

JULIA EU KEE POH v. CHAIRMAN OF TOWN BOARD OF PETALING JAYA

[A.C.J. (Abdul Hamid J.) July 23, 1970]

[Kuala Lumpur — Originating Motion No. 6 of 1970]

Rating — Annual value — "Holdings" which is "vacant" or "unoccupied" or only partially built upon — Basis of assessment — Town Boards Enactment (Cap. 137), s. 44.

This was an appeal against assessment in respect of a rubber estate. The respondent had assessed the land at one-tenth of the improved value thereof on the basis that the land was vacant and unoccupied.

Held: (1) occupation is a question of fact depending on the circumstances of each case. In the circumstances of this case although the agent of the appellant was looking after and managing the estate, it was essentially for purposes of ensuring that tapping was done properly and to arrange the sale of rubber. There was no building on the land and in the circumstances it was evident that the land was not in actual fact occupied;

(2) as the land had no buildings on it it was a vacant holding within the meaning of the Town Boards Enactment;

(3) having found that the land was vacant and unoccupied, the respondent had the right to exercise the option to assess either on the estimated gross annual rent at which the holding might reasonably by expected to be let from year to year or on one-tenth of the improved value thereof.

Cases referred to:-

(1) *Lee Wah Bank Ltd.* v. *Commissioners of Federal Capital of Kuala Lumpur* [1962] M.L.J. 23.

(2) *Kent C.C.* v. *Gerald* [1897] A.C. 639.

CIVIL APPEAL.

Alex Lee (*Thayalan* with him) for the appellant.

Raja Abdul Aziz for the respondent.

Abdul Hamid J.: This appeal is brought under section 44 of the Town Boards Enactment (F.M.S. Cap. 137). The appellant is the registered proprietor of land comprised under certificate of title No. 26570 Lot No. 6183 which is a rubber estate managed by an agent for and on behalf of the appellant. The estate is let for tapping to two tappers and a *kepala*. No one lives on the estate.

The annual value of the said land was assessed for the first time at $42,720 on the basis of 1/10th of the improved value for rating purposes. The Town Board, Petaling Jaya gave notice of valuation on 15th November, 1969. Objection was lodged by the appellant's solicitors on 19th November, 1969 and the objection was rejected. At the commencement of the hearing counsel agreed that the court should first dispose of the only issue of law which arises in this appeal.

It is contended that no annual value should be assessed at all or alternatively that the land should be assessed on the basis of estimated gross annual rent at which the holding might reasonably be let from year to year on the ground that the said land was not vacant or unoccupied or only partially built upon.

Counsel for the appellant has not put forward any ground in support of his contention that no annual value should be assessed. To my mind it can hardly be denied that the board is empowered to assess the annual value. The question that calls for determina-

tion is whether in assessing on the basis of 1/10th of the improved value, the board had, in the particular circumstances of this case, the right to exercise that option.

"Annual value" is defined to mean —

"The estimated gross annual rent at which the holding might reasonably be expected to let from year to year:.... provided that in the case of any holding which is vacant or unoccupied or only partially built upon, the annual value shall at the option of the Board be deemed to be the annual value as hereinbefore defined or one-tenth of the improved value thereof."

It is not disputed that there is no building on the land. However, counsel for the respondent submitted that the land was neither vacant nor unoccupied. On the question of occupation, the learned counsel referred to the definition of "occupier" under section 2 of the Enactment and went on to cite the judgment of Ong J. (as he then was) in *Lee Wah Bank Ltd.* v. *The Commissioner of Federal Capital of Kuala Lumpur.*[1] That case can be distinguished from the present case in that, there, a building of nine storeys high and covering its entire area was in the course of construction and building contractors and their workmen were in continued possession since the work on the foundation began, whereas, in the present case, neither the agent who manages the estate nor the lease holder or any of his servants are in occupation of the said land. What amounts to "occupation" is I think, a question of fact depending on the facts of each case. In the instant case, it seems clear enough that though the agent of the appellant is looking after and managing the estate, it is essentially for purposes of ensuring that tapping is done properly and to arrange for the sale of rubber. On those facts, it seems evident that the land was not in actual fact occupied.

As regards the contention that the land was not vacant, the respondent's counsel pointed out that the land was under an agricultural title, planted with rubber and under tapping. He submitted that user of such land is a relevant factor in considering whether or not the land was vacant. He further submitted that the definition of "holding" is linked with the National Land Code and must therefore be read in consistency with it. The learned counsel's argument is in my view untenable. It is tantamount to saying that the provisions of the National Land Code must be imported to lend meaning to the word "holding" It is stated in plain language that in that Enactment the term "holding" means —

"any land, with or without buildings thereon, which is held under a separate document of title."

It seems evident that the expression "holding" is defined for purposes of the Enactment and is wholly unrelated to the provisions of any other law. The statute does not draw any distinction between agricultural, building or industrial or any other categories of land uses. The expressions "annual value" and "holding" are defined essentially in connection with provisions respecting the imposition of rates under Part IV of the Enactment for certain specified purposes and in relation to a definite area declared under the Enactment by a Ruler of a State. It is not a law operating over the whole country. It is declared independently of all questions of title or categories of land uses. To my mind, the fact as to user of any land within the area declared under the Enactment cannot be regarded as a relevant factor in determining this issue.

The important thing for this court to consider is the aim, scope and object of the Enactment. The interpretation of the Enactment that best accords with the policy appearing from its provisions and also to flow from its language must be given effect. "The language of the statute must not therefore be strained to make it apply to a case which it does not legitimately, on its terms, apply by invoking consideration of the supposed intention of the legislature." *Per* Lord Herschell in *Kent C.C.* v. *Gerald*[2] cited in *Maxwell* on Interpretation of Statutes 9th Ed. p. 22.

The expression "holding" read in the light of the definition of "annual value", seems to indicate that in the case of a holding with buildings on it, a fixed basis of assessment is laid down by the Enactment. The other remaining category of holding is that without buildings on it. It is in respect of this classification that the Enactment provides an exception, enabling the Board to exercise option where such holding is vacant, unoccupied or partially built upon. Apart from vacant holding, a holding without buildings on it would seem to include a holding, though there may be buildings on it, but which is —

(a) only partially built upon, and

(b) unoccupied.

In the instant case, the land in question has no buildings on it, and it is my considered opinion that it is a vacant holding within the meaning of the Enactment. Having found that the land was also unoccupied, the board has in my judgment, the right to exercise the option to assess either on the estimated gross annual rent at which the holding might reasonably be expected to let from year to year or on 1/10th of the improved value thereof.

Order accordingly.

Solicitors: *Skrine & Co.; Rithauddeen & Aziz.*

PRITAM SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Hamid J.) July 23, 1970]

[Kuala Lumpur — Criminal Appeal No. 8 of 1970]

Penal Code, s. 366 — Kidnapping — Abduction — Difference between — Charge of living on earnings of prostitution — Corroboration of complainant's evidence — Women and Girls' Protection Enactment (Cap. 156), s. 5(i).

Criminal Law and Procedure — Charge — Charge added by president of sessions court — Sanction required for charge — Sanction produced after adjournment — Criminal Procedure Code (Cap. 6), ss. 158 and 161.

This was an appeal against the conviction of the appellant on charges of kidnapping a woman in order that the said woman may be forced into illegal intercourse, an offence under section 366 of the Penal Code and of knowingly living on the earnings of prostitution, an offence under section 5(i)